

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WOODS, et al.,

Plaintiff,

v.

DC-3 ENTERTAINMENT LLLP, et al.,

Defendant.

No. C-05-02287 MJJ (EDL)

**ORDER RE: DEFENDANTS' MOTION
FOR ENFORCEMENT OF
SETTLEMENT AND GRANTING IN
PART DEFENDANTS' MOTION FOR
FEES AND COSTS**

The parties in this case reached a confidential settlement at a settlement conference in this Court on September 28, 2006, the terms of which were memorialized on the record. On August 2, 2007, defense counsel informed the Court by letter that a dispute had arisen regarding a critical aspect of the confidential settlement with which compliance had been required by June 30, 2007. On August 21, 2007, the Court held a telephonic conference with the parties to discuss the dispute. On September 4, 2007, Defendants filed a motion to enforcement the settlement agreement. Defendants submitted declarations and evidence from investigators to support the argument that Plaintiffs had not complied with the settlement agreement. Plaintiffs opposed the motion, submitting their own proof to support a showing of compliance. Defendants filed a reply. The Court held telephonic hearings on the motion on October 22, 2007 and October 30, 2007. Subsequent to the hearings, Plaintiffs submitted additional forms of proof to show their timely compliance with the disputed term of the settlement.

The Court has carefully reviewed all of the evidence and considered counsel's arguments.

1 Based on the persuasive evidence submitted by Defendants and the unpersuasive evidence from
2 Plaintiffs, the Court finds that Plaintiffs failed to timely comply with the disputed aspect of the
3 settlement agreement. However, there is sufficient evidence to show compliance by Plaintiffs as of
4 September 11, 2007, but only after and as a result of Defendants bringing this motion to enforce.
5 See Second Supp. Decl. of Deborah Woods and Steven Sterback at 2; Supp. Combined Decl. of
6 Deborah Woods and Steven Sterback at Exs. A-E. Therefore, at this time, it is no longer necessary
7 for the Court to enforce the settlement agreement.

8 One issue raised by the parties during the hearings was which party should bear the costs
9 associated with the investigation conducted by Defendants with respect to Plaintiffs' compliance
10 with the settlement agreement as well as attorneys' fees incurred in bringing this issue to the Court's
11 attention. The settlement agreement provides for an award of reasonable attorneys' fees and costs
12 incurred to enforce the provisions of the settlement. Tr. at 13. Plaintiffs failed to timely comply
13 with the settlement agreement and did not do so until the settlement payment was withheld and
14 Defendants sought enforcement by the Court. Accordingly, as discussed at the hearings, Defendants
15 are entitled to an award of reasonable fees and costs.

16 On November 1, 2007, Defendants' counsel submitted a declaration regarding fees and costs.
17 On December 19, 2007, Plaintiffs' counsel faxed to the Court a copy of counsel's declaration in
18 opposition, disputing the hourly rate charged by defense counsel and the costs incurred for the
19 investigation. First, although Plaintiffs' counsel believes that defense counsel's billing rate of \$665
20 per hour is not necessary or appropriate, he has made no showing to support that belief, such as
21 comparative billing rates. Ms. Hermle is an experienced partner at a large international law firm,
22 and her firm's hourly rates are in line with the prevailing market. Second, Plaintiffs' counsel argues
23 that Defendants could have retained local investigators at a lower cost. See Declaration of Stanley
24 Stone in Opp'n to Defs.' Mot. for Fees and Costs at 2 (stating conclusorily that: "There is no
25 question that local investigators could have done the job at a substantially reduced rate."). But
26 defense counsel states in her declaration that she was unable to locate any local investigators who
27 would have been competent. Declaration of Lynne Hermle in Support of Mot. for Fees and Costs ¶
28 9. Moreover, Plaintiffs' counsel did not submit any support for his argument of the lower rates

1 charged by local investigators, such as cost estimates from local firms. Accordingly, the Court
2 awards the costs of the investigators in the amount of \$21,973.09. According to the billing records
3 submitted by Ms. Hermle, the total amount of fees sought by Defendants is \$21,162.50. See Hermle
4 Decl. Ex. E. The Court reduces this amount by ten percent or \$2,116.25 to ensure that only
5 reasonable fees are awarded. Therefore, the total amount of fees awarded is \$19,046.25.

6 At the October 30, 2007 hearing, the parties discussed attempting to reach a stipulation with
7 respect to the terms for visits by Plaintiffs. The Court has not received a proposed order on this
8 issue. The parties shall meet and confer immediately and submit a proposed order no later than
9 January 25, 2008.

10 Therefore, the escrow holder shall distribute certain of the remaining settlement proceeds to
11 Plaintiffs promptly, but only after deducting the following amounts:

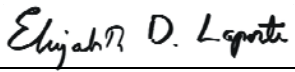
- 12 • The escrow holder shall first deduct from the principal amount of settlement proceeds the
13 amount of fees and costs awarded (\$41,019.34) and shall distribute that amount of fees and
14 costs to Defendants.
- 15 • Because the Court shares Defendants' concern about future disputes regarding Plaintiffs'
16 compliance with the settlement in this case based on their past noncompliance, twenty-five
17 percent of the principal amount of settlement proceeds that remain in escrow after the fees
18 and costs have been deducted shall be held back in the interest-bearing escrow account until
19 January 15, 2010. That amount, plus interest that has accumulated on that amount and will
20 accumulate going forward, shall be distributed to Plaintiffs at that time upon verification by
21 Defendants' counsel that Plaintiffs have continued to comply with the settlement agreement
22 or by motion to the Court if there is a dispute.
- 23 • Because the Court is not convinced that Plaintiffs timely complied with the settlement
24 agreement, they are not entitled to all of the interest that has accumulated on the settlement
25 proceeds. The escrow holder is instructed to disburse the interest that has accumulated on
26 the principal settlement proceeds remaining after the fees, costs and twenty-five percent hold
27 back are deducted to Plaintiffs beginning only from September 11, 2007, the earliest date
28 that Plaintiffs seem to have complied. The interest from the time principal settlement funds

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were deposited until September 10, 2007 shall be distributed to Defendants.

IT IS SO ORDERED.

Dated: January 11, 2008



ELIZABETH D. LAPORTE
United States Magistrate Judge